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No. 91-1099

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

KENNETH M. WALTON, DBA WALTON BACKHOE SERVICE and K. WALTON ENTERPRISES, INC., DBA LAW PLUMBING CO.,
Petitioners,

VS.

OPERATING ENGINEERS PENSION TRUST, OPERATING ENGINEERS HEALTH AND WELFARE FUND, OPERATING ENGINEERS VACATION-HOLIDAY SAVINGS TRUST, and OPERATING ENGINEERS TRAINING TRUST,
Respondents.

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Petitioners, Kenneth M. Walton, dba Walton Backhoe Service and K. Walton Enterprises, Inc., dba Law Plumbing Co., respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the proceedings below on July 18, 1991.

THE OPERATING ENGINEERS MISSTATE THE FACTS

As they did the in the Brief filed before the Ninth Circuit, the Operating Engineers misstate the facts adopted by the U.S. District Court in the Findings of Fact and Conclusions of Law. The Operating Engineers

would have the Court believe that K. Walton Enterprises, Inc. was never a viable entity operating a business; yet, paragraph 6 of those Findings of Fact clearly recites that the corporation acquired the business, Law Plumbing Company, from Walton Law and Millie Law in 1986. App. Doc. 2., page 12a.

Accordingly, the principles enunciated by Petitioners in the opening Brief before this Court, concerning "piercing the corporate veil" and the "single employer" doctrines, do apply. *Fall River Dyeing & Finishing Corp. v. N.L.R.B.*, 482 U.S. 27 (1987) clearly applies to this case as it defines the duties of the successor employer, and should have been followed by Ninth Circuit.

The case relied on by the Ninth Circuit, *Operating Engineers Pension Trust v. A-C Co.*, 859 F.2d 1336 (9th Cir. 1988), is a dangerous case. As stated in Petitioners' initial Brief, that case obscures and confuses the body of law referring to the doctrines of "successor employer," "single employer," and the application of contracts to non-signatory entities. The mere conclusion that one company is automatically responsible for the obligations of another simply because of common ownership is both dangerous, unfair and unworkable. To the extent of the Ninth Circuit's application of *A-C Co.* to resolve this case, that decision should be overturned.

THE OPERATING ENGINEERS MISS THE POINT ON THE ALTER EGO ISSUE

Again, the District Court found as a fact that Walton, Inc. existed and acquired the business of Law Plumbing Company. Whether or not evidence was presented to show the issuance of stock or other corporation records were presented should be irrelevant. On a more difficult point, the Petitioners still maintain that there were no facts in the case to show that the formation or existence of

K. Walton Enterprises, Inc. was an attempt to defraud or otherwise take advantage of the Union or any persons covered under the Collective Bargaining Agreement executed by Kenneth M. Walton individually. This simply is not the case.

The sole proprietorship, Walton Backhoe, was formed before the purchase of Law Plumbing Co. The formation of K. Walton Enterprises, Inc. had nothing to do with the Union.

CONCLUSION

The Petition for review should be granted. Examination of the facts recited in either the Ninth Circuit or the District Court decisions do not at any place reflect badly on the conduct of Petitioners. There is no indication of a fraud or injustice with respect to the Union or the Operation Engineers Trust Funds.

Dated: January 23, 1992

Respectfully submitted,

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